FOR MYSORE STATE

Home (1954) Department.

R4 SERIES.

G.O. No. 2676

Dated 10.9.54

Passed

[Despatch Abstract.]

Crl. Jms.- Appeal against acquittal- S. kanara dist.- C.C. No. 564/54/ A.F.C.M.; Prohibition; S. kanara - Appl.

Sanctioned.

Ref.C.No.5068-54-C5(Special) Office of the Addl.Dt.Magistrate(I)
S.Kanara dated 9.8.54.

From

Sri V.Seetharama Servai,B.A.
Addl.Dt.Magistrate (I) S.Kanara.

To

The Secretary to Government,
Home Department,
Fort St. George Madras 9.

ASSISTANT SECRETARY TO GOVERNMENT
16 AUG 1954
HOME DEPARTMENT

Sir,

Criminal Justice: C.C.No.564/54 on the file of the Addl. I class Magistrate (Prohibition) S.Kanara- appeal against acquittal- proposals- submitted.

In C.C.No.564/54 on the file of the Additional I class Magistrate (Prohibition) South Kanara the accused one Vasudeva Vittal Prabhu son of Vittal Krishna Prabhu of Kunjibettu of Shivalli village, ~~Puttur~~ Udipi taluk was charged by the Prohibition Sub Inspector Udipi under section 4-A of the Madras Prohibition act as the accused was found in a public place in a state of intoxication. The case was tried summarily by the Magistrate and hence copies of the depositions are not available. Two witnesses were examined in this case. The Sub Inspector P.W.1 stated that on 24.5.54 at 10.30 P.M he arrested the accused as he found him in an open public place in a state of intoxication and sent him to P.W.2 the Medical officer for examination. P.W.2 a private medical practitioner deposed that he examined the accused at 10.40 P.M on the same day and found the accused's eyes conjested and pupils dilated react sluggishly to light, breath smelling liquor, gait unsteady and staggering. He was of opinion that the accused had consumed liquor and was under its influence. He had also given a medical certificate to that effect. In Cross examination he stated that he could not say that the smell of liquor was due to arrack and that the other symptoms mentioned in the certificate may also due to other causes as well. The Magistrate held that the prosecution had failed to establish a case against the accused basing his decision of the Madras High court as reported in A.I.R Madras 376 (Vol.41 Cr. Notes 154) April 1954. In the above case the High court had held that the prosecution should prove that the smell came only from I.D arrack, if the no inference is to be drawn about consuming liquor from the smell alone, and that the other symptoms like red eyes also must be proved to be due only to the effect of liquor. In the case referred to in the Judgment of the High court the accused seems to have been rudely awakened from sleep and questioned and that

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accounted for redness of eyes etc. The decision arrived by the Addl. I class Magistrate may be applicable if the accused was found drunk in his house and had slept, as in that case the provisions of 2nd part of section 4-A would be applicable. The facts of the present case ~~were~~ come within the purview of the 1st part of section 4-A, the accused having been found drunk in the open in a public place and as such the cause of intoxication is immaterial. The Public Prosecutor S.Kanara who is consulted in the matter is of opinion that this is a fit case to be taken up on appeal. The acquittal of the accused in such cases will have far reaching effect on the successful enforcement of the provisions of section 4-A(1) (i) and section 4-A of the Madras Prohibition act. I therefore request that the Public Prosecutor Madras may be directed to file an appeal in the High court against the order of the Additional I class Magistrate (Prohibition) S.Kanara in C.C.No.564/54.

2. Kind attention is invited to this office report C.No. 4541/54-C5 dated 21.7.54 in which proposals were submitted to Government in a similar case of this type for filing an appeal against the order of the same Additional I class Magistrate in C.C.410/54.

3. A copy of the charge sheet, Judgment in C.C.No. 564/54, opinion of the Assistant Public Prosecutor I Mangalore in C.C.No.410/54, opinion of the Public Prosecutor South Kanara in C.C.No.410/54 and C.No. 564/54 are enclosed in duplicate.

Yours faithfully,

13/8

For Addl.Dt.Magistrate(I)

Enclosures.
IC/13.8.54.

13/8.

Form 109. PETTY CASE CHARGE SHEET ORDER No.706

Report to the Additional I class Magistrate (Prohibition) Mangalore under M.P.Act by P.S.I.Udipi station.

S.L. 1/54 dated 24.5.54.

Name and address) of person charged: Vasudev Vittal Prabhu son of Vittal Krishna Prabhu Kunjibettu of Shivalli village.

By whom arrested and when: Sri K.Anwar Baig Pro. S.I. Of Udipi Station 10.30 P.M on 24.5.54.

When Bailed.: 02.30 hrs on 25.5.54.

CHARGE: Noted against Col.2 is charged for having been found in a state of intoxication by consuming arrack in a public place at Parkala of Herga village at about 10.30 P.M on 24.5.54 offence under section 4A of M.P. Act XXI of 1937.

Date on which put up before Magistrate: 4.6.54 at 10 A.M

Sentence:

Remarks:

Witness: K.A.Baig P.S.I of Udipi station

2)Gridhara Rao, Doctor L.I.M of Herga village

Sd/ xx xx
Sub Inspector of
Prohibition station,Udipi
25.5.54.

-True copy-

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For Addl.Dt. Magistrate(I)

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N.Dis. 64/54.

Retransmitted.

The accused in this case was charge sheeted for an offence under section 4A of the M.P.Act by the Sub Inspector of Prohibition, Padavu as he was found in a state of intoxication in a public place in Kudpu village. The doctor who had examined the accused immediately has certified in unequivocal terms that he was smelling liquor and was under its influence. This certificate gives all the important symptoms observable in a drunken person. As rightly observed by Justice Ramaswami in the unreported decision, any prudent and reasonable man cannot avoid coming to the conclusion in the instant case that the accused was under the influeence of liquor and was drunk, having regard to the cumulative effect of all the symptoms mentioned in the certificate. The Doctor seems to have conceded that the symptoms taken individually may be due to other causes, though it is not clear ~~that~~ if the prosecution had eligited from him the reasonable inference that might be drawn collectively.

On a reading of the facts of the decision relief on by the learned Addl.First Class Magistrate it appears to me a case charged and convicted under section 4(1) (J) M.P.Act reported in 1952 M.W.N. Cr.page 277, as throughout reference is made to consumption and smell. Further it is not clear if the accused in that case was caught in the open or in his house. The facts of the present case come within the purview of the Ist part of Sec. 4.A the accused having been found drunk in the open, and as such, the cause of intoxication is immaterial. The decision relied on by the Addl.First Class Magistrate may be applicable if the accused was found drunk in his house, as in that case the provisions of the 2nd part of Sec.4A would be applicable.

The High Court of Bombay in a case arising under the Bombay Prohibition Act, for breach of provisions similar those of Sec. 4(1) (j) of the Madras Prohibition Act, [redacted] that the burden of proving the consumption of non [redacted] liquor or drink is on the person pleading the same, [redacted] fact peculiarly within his knowledge. It appears that [redacted] has been confirmed by the Supreme Court.

Having regard to the facts of the present case, the misapplication of the case law, the conflicts of views between two judges (both sitting singly) the importance of law involved and the far reaching effect in the successful enforcement of the provisions of Sec.4(1) (j) and 4-A of M.P.Act, I feel that this is a fit case to be taken up to the High Court in appeal.

Being an appeal against acquittal, the Government will have to be moved within two months from the date of judgment i.e. by 30-7-54 after obtaining the opinion of the Public Prosecutor, Mangalore.

Copies of depositions requested for by me may please be forwarded to the Public Prosecutor

-True copy-

(Sd) x x x
Asst. Public Prosecutor
Grade I.

Mangalore
25.6.54.

MV. 10.8.

for Addl. Asst. Magistrate (C

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Copy of ~~Criminal Appeal 410/54~~ letter dated 12.7.54 from the Public Prosecutor Madras.

C.C. No.410/54 A.F.C.P Prohibition appeal against acquittal-opinion.

The opinion given by Sri P.Ramachandra Rao, Assistant Public Prosecutor Grade I appears to be quite correct. The medical certificate given by the doctor and the other evidence in the case would make any reasonable person come to the conclusion that the accused was found in a state of intoxication in a public place.

As regards the law involved, there are conflicting decisions by the judges of our own High court on the question of proof required to prosecute a man successfully under section 4(a) of the Madras Prohibition Act. However, it appears to be a fit case to be taken up on appeal against acquittal.

Sd/ [illegible]

-True copy-

4/43

for Addl. Dy. Commissioner(I)

12.10.54

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Copy of letter dated 31.7.54 from the Public Prosecutor Bangalore to the Dt. Prohibition Officer, Chitradurga.

C.C.No.564 of 1954- A.P.C. M Prohibition-. acquittal of accused- appeal against acquittal- opinion.

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The facts of this case are identical with the facts of the case tried and acquitted by the Addl. I class Magistrate (Prohibition) in C.C. No.410/54 and in which I have given you an opinion. For the same reasons given by me for taking up C.C.No.410/54 on appeal against acquittal the present case (C.C. No.564/54) should also be taken up on appeal against acquittal.

True copy-

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For Addl. Dt. Magistrate(I)

13/8

Dy. 16.11.54

IN THE COURT OF THE ADDL.I CLASS MAGISTRATE (Pro)U.Mangara.

Calendar Case No. 564.of 1954.

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x.Pl.(DEPT.) Pinto.A.F.C.N. 17.6.54.

Dr.U.Girihara Rao,L.I.M. Parkala S.K.

Regd. Medical Practitioner. Date. 24.5.54.

Signs of alchoholism found on the person of a Male called Vittala Prabhu S/o Vittala Krishna Prabhu aged 22 years an inhabitant of Manjibettu of Shivalli village Udipi who was sent with a requisition from the Prohibition Sub Inspector, Udipi for a report to his drunkeness.

IDENTIFICATION

1.Black mole just below the centre of the left clavical.

2.Black mole about 5" Medial and below the left nipple.

The person above noted was first seen by me at 10.40 P.M. on 24.5.54, when the following signs were found. and was examined at 10.40 P.M. on 24.5.54.

1.Eyes congested, pupil dilated and reach sluggishly to light.

2.Breath smell of liquor.

3.Pulse 120.p.m. Respiration 24 P.M.

4.Gait unsteady and staggering.

I am of opinion that the above person consumed liquor and in under its influence (is intoxicated)

Sd.U.Girihara Rao

-True copy-

for Addl. I Class Magistrate (U)

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PUBLIC PROSECUTOR'S OFFICE
1859
17 AUG
MADRAS

Government of Madras,

(Home department).

Endorsement no. 109625/55/24-1 dated 17.8.54

Referred to the Public Prosecutor, Madras, for early remarks.

Assistant Secretary

16/8/54

To

The Public Prosecutor,
Madras (with encl: pp 1-14 c/f
to be returned with his reply)

G.F. 32 (a)— 28,76,506—30-1-54.

JUDICIAL Department | Received ——— Registered ———

From (Name) Sri V.T.Rangaswami Ayyangar, B.A.B.L., | To

Designation Public Prosecutor | The Secretary to Government, Home Department, Madras.

Station Madras.

No. Opinion 126/54 dated 25--8-- 1954.

Sub: Appeal against acquittal - C.C.564/54 on the file of the Additional First Class Magistrate(Prohibition) South Kanara - Forwarding opinion.

With reference to your endorsement No.109625 Cts I/54-1, dated 17-8-54, I give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

Opinion.

This is again a case in which the learned Magistrate had found the accused not guilty of the offence punishable under Sec. 4-A of the Madras Prohibition Act on account of the failure by the prosecution to establish that the accused consumed arrack. As per my opinion in 116/54 in which I have been directed to file the appeal

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P.H.C. 6 of 6

4 in this case also where the same Magistrate had disposed of the
an appeal
case on identical reasons may be filed.

V.T. Rangaswamy

Public Prosecutor.

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HOME DEPARTMENT.

Courts I

[C. No. 10925/54] 2676

G.O. Rt. No. Dated 10.9.54.

S. Kamara dist.

CRIMINAL JUSTICE—Appeal against acquittal / C.C. No. 564 of 1954 on the file of the A.P.C.M., Prohibition Application—Sanctioned.

Read :—(1) From the ~~D.M./~~A.D.M. (I)./Commissioner office, Madras.- S. Kamara, C. No. 5068-54-C.S.I.(Spl) dated 9.8.54.

(2) From the P.P./~~S.P.~~ Madras, Opn. No. 126 of 1954, dated 25.8.1954.

ORDER.

Under Section 417 of the Code of Criminal Psocedure, 1898, the Public/~~State~~ Prosecutor, Madras, is requested to present an appeal to the High Court against the acquittal by the A.P.C.M. (Prohibition), S. Kamara, of the accused in C.C. No. 564 of 1954 on his file.

To the P.P./~~S.P.~~ Madras. (with encl: copies of judgt as (A) in original)

Copy to the ~~D.M.~~/A.D.M. (I)- S. Kamara

~~Commissioner of Police, Madras.~~ —

S.F.

NOTE.—The draft order above follows the opinion of the Public/~~State~~ Prosecutor, Madras, at pp 15 & 16 cf.

Date of judgment 17.6.54.

Three months time expires on 16.9.54.

Six months time expires on 16.12.54.

C.No. 10962 5/54

Home (Cts I) Dept.

Crl. Jus. - Appeal against acquittal - S. Kanara dist. - C.C. No. 564/54/A.F.C.M. (Prohibition) S. Kanara - Accused Vasudeva Vittal ~~Brahma~~ Prabhu

Ref: From the A.D.M.(I), S. Kanara, C.No. 5068-54-C5 (Apl) dt 9.8.54.

fpp 1 & 2 c/f.

The A.D.M.(I), S. Kanara, has submitted proposals for filing an appeal against the acquittal of the accused by the A.F.C.M., (Prohibition), S. Kanara, in C.C. No. 564 of 54 on his file. The case may, in the first instance, be referred to the P.P., Madras. The endt. submitted is for signature.

Ibid

Appeal time expires on 16.12.54 (Vide A on p 14 c/f.)

16.8.54.

17/8/54

16/8/54

Issue Endt

17/8/54

12/8

[From the P.P., Opn. No. 126/54 dt 25.8.54.]

The accused, Vasudeva Vittal Prabhu was charged u/s. 4-A. of the Madras Prohibition Act as he was found in a public place in a state of intoxication. The A.F.C.M. (Prohibition) S. Kanara acquitted him in C.C. No. 564/54 on his file on the ground that the prosecution failed to establish that the accused consumed arrack. The A.D.M.(I),

A on p 5 c/f

X on p. 15 c/f

10262/52

S. Kamara, submitted proposals for filing an appeal against this acquittal. In a similar case an appeal against the acquittal of the accused on the same ground by the same A.F.C.M., S. Kamara, ~~was~~ preferred in C.C. No. 410/54. on his file was preferred in S.O. Rt. 2439, Home, D) 16.8.54 as it was held that the object of an appeal was as much to remedy the miscarriage of justice as it is to correct errors of law. The case at hand being identical with that case, the P.P. opines that an appeal may be filed in this case also. The Govt. may agree with him and sanction the application for filing an appeal against the acquittal of the accused in this case. The draft order submitted accordingly is for approval.

pp 1+2 Cf

vide p. 11 Cf. Z (B)

p 13 Cf ibid

AA on pp 2+3 n/s ibid

Y on pp 15+16 Cf

fos

fos
8/9/54

7.9.54

7.9.54

[Issued as S.O. Rt. 2676 D 10.9.54]

p 17 Cf